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Sunset Review
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MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Expedited Sunset Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon Steel Plate from Mexico; Final Results

Summary

We have analyzed the substantive response of the interested parties in the sunset review of the countervailing duty ("CVD") order covering certain cut-to-length carbon steel plate from Mexico.[1] We recommend that you approve the positions we have developed in the Discussion of Issues section of this memorandum. Below is the complete list of the issues in this sunset review for which we received a substantive response:

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
2. Net Countervailable Subsidy Likely to Prevail
3. Nature of the Subsidy

History of the Order

On July 9, 1993, the Department of Commerce ("the Department") issued its final affirmative countervailing duty ("CVD") determination on certain cut-to-length carbon steel plate from Mexico. The Department investigated one producer, Altos Hornos de Mexico, SA ("AHMSA"), and determined that benefits which constitute subsidies within the meaning of

[1] On November 30, 2005, a substantive response was submitted on behalf of IPSCO, Inc., Mittal Steel USA ISG Inc. ("Mittal Steel USA"), Nucor Corporation ("Nucor"), and Oregon Steel Mills, Inc. ("Oregon Steel") (collectively, "domestic interested parties"). On December 1, 2005, a request to include the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC ("USW") as a "domestic interested party"was submitted.

section 701 of the Tariff Act of 1930, as amended (the "Act"), were being provided by the Government of Mexico ("GOM") to AHMSA. The Department found an estimated net subsidy of 20.25 percent ad valorem for AHMSA and all other manufacturers, producers, and exporters, based on eight programs:

(1) GOM Equity Infusions program;
(2) GOM Assumption of AHMSA's Debt program;
(3) 1988 and 1990 Debt Restructuring program;
(4) Bancomext Short-term Pre-export Financing program;
(5) Bancomext Short-term Import Financing program;
(6) Nafinsa Long-term Loans program;
(7) IMIS Research and Development program; and
(8) Pre-privatization Lay-off Financing program.

See Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Mexico, 58 FR 37352, 37356-37361, (July 9, 1993). On August 17, 1993, the Department published the order in the Federal Register. See Countervailing Duty Order and Amendment to Final Affirmative Countervailing Duty Determination: Certain Steel Products from Mexico, 58 FR 43755 (August 17, 1993).

The Department has completed three administrative reviews and one sunset review since the issuance of the order. The Department conducted an administrative review for the period January 1, 1997 through December 31, 1997, and determined the net subsidy rate for AHMSA to be 10.42 percent ad valorem based on eight programs:

(1) the GOM Equity Infusions program;
(2) the 1986 Assumption of AHMSA Debt program;
(3) the 1988 and 1990 Debt Restructuring of AHMSA Debt and the Resulting Discounted Prepayment in 1996 of AHMSA's Restructuring Debt Owed to the GOM program;
(4) the IMIS Research and Development Grants program;
(5) the Pre-privatization Lay-off Financing from the GOM and the 1991 Equity Infusion in Connection with the Debt to Equity Swap of Processadora se Aceros Rasini, S.A. de C.V. ("PROCARSA") program;
(6) the Bancomext Export Loans program;
(7) the PITEX Duty-Free Imports for Companies That Export ("PITEX") program; and
(8) the Immediate Deduction program.

In the 1997 administrative review, the Department identified two new countervailable programs, the PITEX program and the Immediate Deduction program. See Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Countervailing Duty Administrative Review, 65 FR 13368 (March 13, 2000).

On April 6, 2000, in the first sunset review of the order, the Department determined that revocation would be likely to lead to continuation or recurrence of a countervailing subsidy of 25.87 percent ad valorem for AHMSA and an estimated net subsidy of 20.25 percent ad valorem for all other manufacturers, producers, and exporters. The countervailable subsidy rate in the first sunset review is different from the rate in the investigation. Because the Department identified two new countervailable programs in the administrative review covering the period January 1, 1997 through December 31, 1997, using the net countervailable subsidy rate determined in the investigation was no longer appropriate. The Department adjusted AHMSA's countervailing duty rate from the original investigation by adding the rates from the new PITEX program and the Immediate Deduction program programs found to be countervailable in the administrative review. See Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Countervailing Duty Expedited Sunset Review, 65 FR 18067 (April 6, 2000) and "Issues and Decision Memo for the Sunset Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Expedited Review," (April 6, 2000). Subsequently, the International Trade Commission ("ITC"), pursuant to sections 751(c) and 752 of the Act, determined that revocation of the order would be likely to lead to continuation or recurrence of material injury. Thus, on December 15, 2000, the Department published a notice continuing the order. See Continuation of Antidumping and Countervailing Duty Orders on Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, South Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom, 65 FR 78469 (December 15, 2000).

The Department conducted an administrative review of AHMSA for the period January 1, 1998, through December 31, 1998. The Department determined the net subsidy rate for AHMSA to be 11.68 percent ad valorem based on nine programs:

(1) the GOM Equity Infusions program;
(2) the 1986 Assumption of AHMSA's Debt program;
(3) the 1988 and 1990 Debt Restructuring of AHMSA Debt and the Resulting Discounted Prepayment in 1996 of AHMSA's Restructuring Debt Owed to the GOM program;
(4) Grants from the Mexican Institute for Steel Research (IMIS) program;
(5) the Lay-off Financing from the GOM bestowed in 1994;
(6) the Bancomext Export Loans program;
(7) the PITEX Duty-Free Imports for Companies That Export ("PITEX") program;
(8) the Committed Investment program; and
(9) the Immediate Deduction program.

See Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Countervailing Duty Administrative Review, 66 FR 14549 (March 13, 2001). We note that this is the first administrative review in which the Department determined that the Committed Investment program to be a countervailable program.

The Department conducted an administrative review of AHMSA for the period January 1, 2001, through December 31, 2001. The Department determined the net subsidy rate for AHMSA to be 13.37 percent ad valorem based on seven programs:

(1) the GOM Equity Infusions program;
(2) the 1988 and 1990 Debt Restructuring of AHMSA Debt and the Resulting Discounted Prepayment in 1996 of AHMSA's Restructuring Debt Owed to the GOM program;
(3) Grants from the Mexican Institute for Steel Research (IMIS) program;
(4) the Lay-off Financing from the GOM bestowed in 1994;
(5) the Bancomext Export Loans program;
(6) the Committed Investment program; and
(7) the Immediate Deduction program.

See Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Countervailing Duty Administrative Review, 69 FR 1972 (January 13, 2004) ("Certain Steel").

On November 1, 2005, the Department initiated a sunset review of the CVD order on certain cut-to-length carbon steel plate from Mexico pursuant to section 751(c) of the Act. See Initiation of Five-Year ("Sunset") Reviews, 70 FR 65884 (Nov. 1, 2005).

Discussion of Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any changes in the programs that gave rise to the net countervailable subsidy have occurred that are likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the ITC the net countervailable subsidy likely to prevail if the order were revoked. In addition, consistent with section 752(a)(6), the Department shall provide to the ITC information concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures ("Subsidies Agreement").

Below we address the substantive response of the interested parties.

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Interested Parties' Comments

In their substantive response, the domestic interested parties state that, in the final affirmative CVD determination, the Department found that countervailable subsidies were being provided to a Mexican producer of subject merchandise. They also state that the Department, in its initial sunset review, found that revocation of the order would likely result in the continuation or recurrence of a countervailable subsidy. They claim that nothing has changed that would warrant a different finding in this sunset review. See domestic interested parties' November 20, 2006, substantive response at page 6.

Department's Position

The Department makes its likelihood determination, (i.e., of whether revocation of the order is likely to lead to continuation or recurrence of a countervailable subsidy) on an order-wide (country-wide) basis, although company-specific rates are reported to the ITC. See Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 103-316, Vol. 1 (1994) at 879 and House Report, H.R. Rep. No. 103-826 (1994) at 56.

There was no participation in this review by any of the respondent interested parties. Further, except as noted below, the facts available to the Department indicate that the subsidy programs previously found countervailable continue to exist and that benefits from allocable, countervailable subsidies continue past the end of the review. Consequently, the Department finds that a countervailable subsidy is likely to continue or recur in the event that this countervailing duty order is revoked.

2. Net Countervailable Subsidy Likely to Prevail

Interested Parties' Comments

The domestic interested parties assert that the Department normally will select the rate from the investigation because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place. However, the domestic interested parties posit that the Department should find that the magnitudes of the net countervailable subsidy that are likely to prevail are the rates from the first sunset review, 25.87 percent ad valorem for AHMSA, which is the investigation rate plus rates from two additional programs found countervailable in a subsequent review, and 20.25 percent ad valorem for all other manufacturers, producers, and exporters. See the domestic interested parties' November 30, 2006, substantive response at page 7.

Department's Position

The Department normally will provide to the ITC the net countervailable subsidy that was determined in the original investigation because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place. However, this rate may not always be the most appropriate rate. See SAA at 890, and House Report at 64. For companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a net countervailable subsidy rate based on the rate from the investigation for all other manufacturers, producers, and exporters.

In the investigation, we found that the GOM provided countervailable subsidies to producers of the subject merchandise. As noted above, we did not receive a response from the GOM or any respondent interested party in this sunset review. Therefore, absent any argument and evidence to the contrary, the Department determines that the net countervailable subsidy that would be likely to prevail in the event of revocation of the order is 28.32 percent ad valorem for AHMSA and 20.25 percent for all other manufactures, producers, and exporters. To calculate the rate for AHMSA, we added to the rate from the investigation the rates for the Immediate Deduction program (0.59 percent ad valorem) and the PITEX program (5.03 percent ad valorem) from the 1997 administrative review, which, as explained above, was the first review period that the Department identified these programs as countervailable. We also added to the AHMSA rate from the investigation the rate for the Committed Investment program (2.45 percent ad valorem) from the 1998 administrative review, which was the first review period that the Department identified the program as countervailable. See Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Countervailing Duty Administrative Review, 66 FR 14549 (March 13, 2000). We determine that revocation would be likely to lead to continuation or recurrence of a countervailing subsidy of 28.32 percent ad valorem for AHMSA and 20.25 percent ad valorem for all other manufacturers, producers, and exporters.

Therefore, in the event of revocation of the order, the rate likely to prevail would be 28.32 percent ad valorem for AHMSA and 20.25 percent for all other manufacturers, producers, and exporters. Consistent with section 752(b)(3) of the Act, the Department will provide the ITC the net countervailable subsidy rate below in the section entitled "Final Results of Review."

3. Nature of the Subsidy

Consistent with section 752(a)(6) of the Act, the Department is providing the following information to the ITC concerning the nature of the subsidy, and whether the subsidy is a subsidy as described in Article 3 or Article 6.1 of the WTO Agreement on Subsidies and Countervailing Measures (ASCM). We note that Article 6.1 of the ASCM expired effective January 1, 2000.

The following are export subsidies as described in Article 3 of the ASCM.

Bancomext Export Loans:

Bancomext offers a government program that provides pre-export working capital loans and export loans. The Department determined that because these loans are available only to exporters, they are countervailable to the extent that they are provided at preferential rates.

PITEX Duty-Free Imports for Companies that Export:
The Programa de Importacion Temporal Para Producir Produtos Para Exportar (PITEX) exempts certain manufacturers from paying import duties on temporarily imported goods that will be used in the production of exports. The Department found PITEX benefits to be countervailable to the extent that they provide duty exemptions on imports of merchandise not physically incorporated into exported products and not converted to permanent import status.

The following programs do not fall within the meaning of Article 3.1 of the ASCM. However, they could be subsidies described in Article 6.1 of the ASCM if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the ASCM. They also could fall within the meaning of Article 6.1 if they constitute debt forgiveness or are subsidies to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record of this review in order for the Department to make such a determination. We, however, are providing the ITC with the following program descriptions.

Government of Mexico (GOM) Equity Infusions:
AHMSA received equity infusions from the GOM in 1977, in each year from 1979 to 1987, in 1990, and in 1991. The Department found AHMSA to be unequityworthy in the years of the equity infusions, and determined that the equity infusions by the GOM into AHMSA were specific and made on terms inconsistent with commercial considerations.

1988 and 1990 Debt Restructuring of AHMSA and the Resulting Discounted Prepayment in 1996:
The GOM purchased AHMSA's debt from foreign creditors in exchange for GOM debt. The Department determined that the debt restructuring agreements conferred countervailable subsidies because they were specifically provided to AHMSA on terms inconsistent with commercial considerations. In addition, the Department subsequently determined that AHMSA's discounted prepayment of the outstanding principal in 1996 constituted a partial debt forgiveness on behalf of the GOM.

GOM Assumption of AHMSA's Debt:
The GOM negotiated an agreement with AHMSA in which the GOM assumed a portion of AHMSA's debt. This debt assumption was specific, and thus, countervailable.

FONEI Long-Term Financing:
FONEI was a specialized financial development fund that provided long-term loans at below-market rates to Mexican companies to foster the efficient production of services and industrial goods.

Nafinsa Long-Term Loans:
Nafinsa provided long-term financing at below-market rates to Mexican enterprises in various geographical areas of Mexico.

Grants from the Mexican Institute for Steel Research (IMIS):
The Instituto Mexicano de Investigaciones Siderurgicas (IMIS), or the Mexican Institute of Steel Research, was a government-owned research and development organization that performed independent and joint venture research with the iron and steel industry. The Department found that IMIS did not make the results of the joint venture publicly available, and thus, bestowed a countervailable subsidy.

Pre-privatization Lay-off Financing:
The GOM made an interest-free loan to AHMSA to cover the severance costs of lay-offs made in 1991. In a subsequent review, the Department found that the loan was forgiven in 1994. Hence, the Department treated the loan forgiveness as a non-recurring grant.

Committed Investment Into AHMSA:
The Department determined that the committed investment bid accepted by the GOM was specific to AHMSA and constituted a government financial contribution within the meaning of the Act.

Immediate Deduction:
This program promotes investment by allowing companies to take an accelerated or immediate deduction set to an industry-specific rate, rather than using the standard straight-line depreciation. This program only applied to property used permanently within Mexico but outside of the metropolitan areas of Mexico City, Guadalajara, and Monterey.

Final Results of Review

As a result of this review, we find that revocation of the countervailing duty order would likely lead to continuation or recurrence of a countervailable subsidy at the rates listed below:

Producer/Exporter	Net Countervailable Subsidy (%)
AHMSA	28.32
All Others	20.25

Recommendation

Based on our analysis of the substantive response received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish these final results of review in the Federal Register.

AGREE: _____ DISAGREE: _____

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David M. Spooner
Assistant Secretary
for Import Administration

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(Date)